

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLEE**

77-1242

To be argued by
JEFFREY E. LIVINGSTON

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 77-1242

8/22
UNITED STATES OF AMERICA,

BPLS
Appellee,

—v.—

LORRAINE V. GLOVER,
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES OF AMERICA

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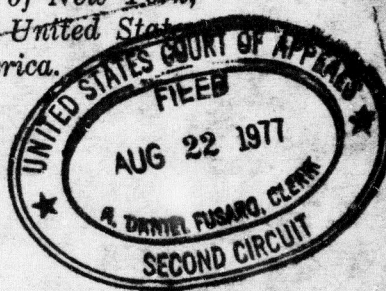


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LORRAINE V. GLOVER,

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BRIEF FOR THE UNITED STATES OF AMERICA

Preliminary Statement

Lorraine V. Glover appeals from a judgment of conviction entered on May 4, 1977, in the United States District Court for the Southern District of New York after a two-day trial before the Honorable Dudley B. Bonsal, United States District Judge, and a jury.

Indictment S 76 Cr. 963, filed on January 24, 1977, charged Glover with embezzling and converting to her own use approximately \$1,000, which had come into her hands during her employment as a window clerk for the United States Postal Service, in violation of Title 18, United States Code, Section 1711.*

* Indictment S 76 Cr. 963 superseded indictment 76 Cr. 963, filed October 15, 1976, which charged Glover with embezzlement of \$100.

Trial of Glover began on March 22, 1977. On March 23, 1977, after 2 hours and 25 minutes of deliberation, the jury found Glover guilty as charged.

On May 4, 1977, Judge Bonsal sentenced Glover to two years' imprisonment, suspended execution of the sentence, and placed Glover on probation for two years.

Statement of Facts

A. The Government's Case

On August 16, 1976, an audit was taken of the stamp stock and cash accountability of Lorraine V. Glover and she was found short \$1,007.55.* (Tr. 99; GX 7).

The circumstances of the audit were entirely fortuitous. On August 14, 1976, a window clerk whose window was next to Glover's had performed an informal audit of his own drawer, and found himself short approximately \$90.** On August 16, 1976, Barbara L. Bolling, Superintendent of the station where Glover worked, in-

* As a window clerk at College Station in Manhattan, Glover was given a drawer or box, which contained stamp stock for sale to customers and cash for which she was accountable. Her stamp stock included stamps of various denominations, stamped envelopes, etc. The drawer is kept under lock and key at the window when the clerk is on duty and in a vault when the clerk is not on duty. Records were kept of Glover's daily accountability, a dollar amount that would fluctuate as the result of transactions at the end of certain work days in which Glover would turn in cash and/or take out stamp stock. On August 16, 1976, Glover's accountability, sometimes called "fixed credit", was \$1818. (Tr. 21-30).

References to "Tr." are to the trial transcript; "GX" denotes Government Exhibits.

** This window clerk and all others were audited on August 17, 1976.

structed a Mr. Edwards to audit Glover's drawer prior to Glover's opening her window that day. Edwards found Glover approximately \$960 short and reported his findings to Bolling. (Tr. 35-39).

Before Bolling herself took another audit of Glover's drawer, Glover told Bolling that she knew where \$560 of the missing money was. Glover explained to Bolling that a customer had purchased stamps with a check for \$560, that Glover had misplaced the check and that Glover had later spoken to the people who had given her the check concerning a possible refund of the money to the Post Office. (Tr. 41-44).

In a second conversation, before Bolling took the audit, Glover told her "she knew where the rest of the money was", but Bolling refused to hear her any further. (Tr. 47).

After Bolling's audit revealed a shortage of approximately \$973, a third conversation occurred in which Glover asked Bolling to permit Glover to leave work "to get the money, to put it in." Bolling refused and instead called the Postal Examiners. (Tr. 48).

At approximately 2:30 P.M. that day, Postal Inspectors Panzerra and Marshal and two Postal examiners performed an audit of the cash and stamp stock in Glover's drawer, finding a shortage of \$1,007.55. Glover was present during the audit and assented to the computations. (Tr. 93-94; GX 7).

At approximately 3:30 P.M., Inspector Panzerra advised Glover of her rights. (Tr. 100, GX 8). Glover first denied taking the money, telling Inspector Panzerra the story about the misplaced check. (Tr. 104). Glover later admitted taking the money, saying she needed the money for her sick father in South Carolina. (Tr. 107). She

changed her story again in a statement written in her own hand. Still admitting she had taken the money, she claimed she needed it to pay for an abortion.* (Tr. 108; GX 9).

* Except for certain immaterial variations in spelling and punctuation, her statement was, in pertinent part, as follows:

I Lorraine V. Glover do hereby solemnly swear the statement for which I am about to make is the whole truth. I am thirty five years old have two children ages 4 and thirteen. . . I have two children that I take care of. I could not afford another child so I paid for an abortion. I took small sums of money at a time and it just all added up. An audit of my Credit was conducted by Postal System examiners and Postal inspectors and I was found with a shortage of 1007.55 dollars short. I agreed with the count by all person concern. The count was conducted in my presence. I paid a down payment of \$750.00 for the abortion and monthly payment of fifty dollar per month. The total cost was \$1750.00. I used the money taken from my credit to pay off the doctor. After I gave him \$750.00 down payment, I made arrangement to pay him a set amount of money from my pay every two weeks. But it seem he had to leave town and wanted the money all at once. So I paid him in a period of four pay checks to pay him and then I took small amounts of money from my cash draw to help me maintain my house hold. I intended to have the money place back as soon as possible but it seems my insurance could not be sold at the time that I needed it. I was certain that I could have had the money back before my box was examined by the examiners. He threatened to tell my family and friends if I did not finish paying him off at once so I had no other choice. I have never did anything like this before. I worked with money before but I never had a desparate need for it. I just could not afford to have another child so that was my only alternative. I did not intended to use the money from my drawer but after what the doctor said I had no other choice at the time.

The following day Glover was interviewed by an Assistant United States Attorney and was given an opportunity to make changes, additions or deletions in her statement. She declined to change the statement, declaring it true and correct. (Tr. 175; GX 10).

After the interview was completed, Mrs. Bolling again spoke briefly to Glover at approximately 4:30 or 5:00 P.M. At that time Glover denied taking the money, adding that she had gotten about \$1200 from the Credit Union a week or so earlier. (Tr. 55).

B. The Defense Case

The defense consisted solely of Glover's testimony. Glover explained that during the interview with Inspector Panzerra she had denied taking the money "because I had just taken out a \$1200 loan from the Metropolitan, the union office. . . ." (Tr. 206).

Regarding the written statement, which she admitted making, her testimony was as follows:

Q. Let's begin with: did you ever take the \$1007 that is claimed to be missing?

A. No, I did not.*

Q. Do you know who did?

A. You gave a statement which says you took the money to pay for an abortion, is that right?

A. Yes.

Q. Now, is that statement true?

A. No.

Q. Now, it says that the total cost of the abortion was \$1750?

* As this question and answer indicates, Glover only denied taking the total missing amount. She never asserted that she had not taken any money at all. The last question and answer of her direct testimony was the following:

Q. As you sit here today, you are certain that you did not take that \$1005, is that correct?

A. Yes, I am positive, I did not take *that amount of money*. (Tr. 212) (emphasis supplied).

A. Yes.

Q. What? [sic]

A. Around \$250.

Q. Did you know that at the time you wrote this out?

A. Yes.

Q. Why did you sign a statement like this and swear to it if it wasn't true?

A. Because at the time I was tired of him constantly asking me questions, and since he said that if I had a hardship case, that the postmaster would understand, I figured this would be the best thing to say.

(Tr. 208-09).

On cross-examination, Glover was questioned on several matters including the misplaced check story. She reiterated that she had seen the person who had given her the \$560 check and knew what organization had written the check, but when asked whether she had attempted to find that person again she merely replied: "I didn't see him after that." (Tr. 214-15).

She was also asked questions relating to the abortion story in her direct testimony. (Tr. 217). During the course of this testimony, she denied having an abortion in 1976, and denied that she had told another employee that she had had an abortion in 1976. She then denied having made an application to a hospital in 1976 authorizing an abortion. (Tr. 218-19). At this point the hospital application was admitted in evidence. (Tr. 222). Upon further questioning, Glover explained that she had made out the application as the result of a mistaken diagnosis that she was pregnant. (Tr. 223). Questioning along this line was cut off almost immediately following this response.

The questioning then focused upon Glover's contention that she didn't take the money because she did not need money, having just received \$1200 from the credit union. She was asked whether it was not true that she had had a "family emergency". She admitted that her loan application stated "family emergency", but stated that she did not in fact have an emergency. (Tr. 224). The cross-examiner continued this line of questioning in an attempt to establish that following receipt of the \$1,000 loan on July 26, 1976, she had applied for another loan of \$1,000. (Tr. 229). During the course of this questioning, the Court admitted in evidence two loan applications, one dated July 26, 1976 and one dated August 6, 1976. (Tr. 231; GX 16, 15).

Prior to summations, the Court instructed the jury that what the lawyers and the Court say is not evidence. (Tr. 246).*

During the Government's rebuttal summation, the prosecutor made the following statements:

Now, the government doesn't pretend to know what Lorraine Glover did with the money. All we know is that she took it. She said she took it. The money was missing. And she fabricated a big story. The story about the abortion. We don't contend that is true. That is clearly a lie. I agree with Mr. Joy, it was a marvelous, marvelous fiction.

How about the missing check? That was a marvelous fiction too, wasn't it?

She told you about the check, but if that was true, wouldn't she have followed up on it, if that

* The Court had made a similar charge prior to the openings. (Tr. 10).

was true? Didn't she know that she was being charged with a crime here? Why didn't she follow up on the missing check.

Ladies and gentlemen, you may live a hundred years, and you may be on a hundred juries, but you will never see a case where the proof of guilt is stronger than in this case.

MR. JOY [Defense lawyer]: I object to that, your Honor.

THE COURT: It's up to the jury.

MR. LIVINGSTON: Just look at the evidence, ladies and gentlemen. Remember the oath that you took when you started this trial, and base your decision on an objective study of the evidence. Remember, your job is to find the truth.

(Tr. 266-67).

Following the summation, Judge Bonsal instructed the jury in various ways no fewer than six times that their verdict must be based solely on the evidence on the record, that what the lawyers say is not evidence and that the finding of facts is the exclusive province of the jury. (Tr. 269-70, 270, 273, 279, and 281).

After deliberating almost two hours, the jury requested and heard the reading of much of Glover's direct testimony and 35 minutes later returned a verdict of guilty.

ARGUMENT

POINT I

Of Two Remarks Attacked By Glover, One Is Presented Out Of Context And The Other Was Not Prejudicial.

Glover contends that two remarks by the prosecutor in summation improperly conveyed to the jury the prosecutor's personal belief in Glover's guilt. Glover presents the first remark, to which she did not object at trial,* out of context in an attempt to create the impression of an effect not present at trial. The second remark, when viewed in the context of the rebuttal summation and in light of the record as a whole, was entirely innocuous.

The law in this area is clear. A prosecutor may not properly convey to the jury his personal belief in the defendant's guilt, *Lawn v. United States*, 355 U.S. 339, 359 n.15 (1958); *United States v. Grunberger*, 431 F.2d 1062 (2d Cir. 1970), unless the belief is expressly based upon the record. *United States v. Splain*, 545 F.2d 1131, 1135 n.2 (8th Cir. 1976). In assessing the effect of an alleged improper remark, a court must scrutinize each case on its own facts and consider the record as a whole. *United States v. Grunberger*, *supra*, 431 F.2d at 1069, citing *United States v. Socony Vacuum Oil Company*, 310 U.S. 150 (1940). See also *United States v. Caniff*, 521

* As this Court has noted on numerous occasions, a failure to object to a statement in summation not only shows the innocuousness of the remark, but also precludes review on appeal. *United States v. Head*, 546 F.2d 6, 7 (2d Cir. 1976), *cert. denied*, *sub nom. Wheaton v. United States*, — U.S. — (1977); *United States v. Ong*, 541 F.2d 331, 340 (2d Cir. 1976); *United States v. Caniff*, 521 F.2d 565, 572 (2d Cir. 1975), *cert. denied sub nom. Benigno v. United States*, 423 U.S. 1059 (1976), and cases there cited.

F.2d 565, 571 (2d Cir. 1975), *cert. denied sub nom. Benigno v. United States*, 423 U.S. 1059 (1976); *United States v. Briggs*, 457 F.2d 908, 912 (2d Cir. 1972). An important factor to consider in making this assessment is the relative strength of the Government's case. *United States v. Splain, supra*, 545 F.2d at 1135; *United States v. Perez*, 493 F.2d 1339 (10th Cir. 1974); *United States v. Grunberger, supra*, 431 F.2d at 1067. If the evidence of guilt is overwhelming, an improper argument is less likely to affect the jury verdict.

Turning to the facts of this case, the first remark Glover complains of is as follows.*

Now, the government doesn't pretend to know what Lorraine Glover did with the money. All we know is that she took it. *She said she took it. The money was missing. And she fabricated a big story. The story about the abortion.* (Tr. 266) (Emphasis supplied).

The immediate references to Glover's confession and other evidence on the record make clear that the remarks were merely part of a factual argument based on the record. Taken in context,** the remarks are most reasonably interpreted as meaning "the proof does not show what Glover did with the money; the proof only shows she took it." Evidently trial counsel viewed the remarks in this manner, since he raised no objection. See *United States v. Caniff, supra*, 521 F.2d at 572.

* The underlining indicates the portion of the paragraph not quoted in Glover's brief.

** The importance of viewing criticized remarks in context was emphasized in *United States v. Caniff, supra*, 521 F.2d at 571; see also *United States v. White*, 486 F.2d 204, 207 (2d Cir. 1973), *cert. denied*, 415 U.S. 980 (1974).

Similarly, the second remark of which Glover complains * provides no ground for concern, let alone a reversal. Glover relies primarily upon this Court's decision in *United States v. Grunberger, supra*, which, Glover asserts, involved a prosecutorial statement "almost identical" to that in this case. Glover fundamentally misreads *Grunberger*; the claimed identity simply does not exist.

In *Grunberger*, the prosecutor included the following remark in his summation:

I don't know of a case where the evidence has been as strong as it has been in this case to establish the guilt of any defendant.

431 F.2d at 1068. The two remarks, of course, are totally different. As the very section of the *Grunberger* opinion cited by Glover emphasizes, Brief at 8, the evil in the *Grunberger* remark was that the apparently experienced prosecutor offered his own personal comparison of the case before the jury with other, concrete cases that had been tried before other juries. As this Court noted, the statement conveyed a personal belief that "the jury was expected to understand came from the prosecutor's personal knowledge of, and from the prosecutor's prior experience with, *other* defendants, and as such he was speaking as an expert based upon matter outside the record." 431 F.2d at 1068 (emphasis added). In this case, by contrast, the prosecutor did not offer his personal observations on anything. Furthermore, rather than comparing the case before the jury with actual, past cases, he merely—and properly—asserted to the jury

* "Ladies and gentlemen, you may live a hundred years, and you may be on a hundred juries, but you will never see a case where the proof of guilt is stronger than in this case." (Tr. 266-67).

that measured against any *abstract* case, the facts of this case met any possible burden of proof.* Particularly when viewed against the defense counsel's summation, which constantly interjected his own personal belief in the weight of the case against his client,** the remark was entirely proper.

This case differs from *Grunberger* in other fundamental respects as well. In *Grunberger*, the Court reversed in view of the "cumulative effect" of a number of errors (including an improper instruction in which the judge "usurped the function of the jury as a fact-finder," 431 F.2d at 1069, and improper intervention by the trial judge, *id.* at 1067-68). It also noted that it was a case where the "factual issues were close and the Government's case was not particularly strong," *id.* at 1069. In contrast, in a number of cases where truly egregious conduct

* The prosecutor's purpose and effect were further demonstrated by the portion of his summation *immediately* following the challenged remark. In this portion of the summation, which Glover declines to quote in her brief, the Assistant United States Attorney stated:

"Just look at the evidence, ladies and gentlemen. Remember the oath that you took when you started this trial, and base your decision on an *objective study of the evidence*. Remember, your job is to find the truth." (Tr. 267) (emphasis added).

** The keynote and theme of Glover's summation was that the Government's case was not proved beyond a reasonable doubt; indeed, the beginning and first two pages of the summation dwelt on this proposition. (Tr. 255-56). The summation that followed was laced with references to the first person (see, e.g., "I'm sure that won't affect your otherwise verdict" [Tr. 256]; "Now, another thing I really didn't understand at all, but maybe there is something I missed. . . ." [Tr. 257]. The defense lawyer then concluded " . . . I think when you review the evidence you will be convinced that Lorraine Glover is not guilty, and your verdict should be one of acquittal." (Tr. 264) (emphasis added).

occurred, the Courts have refused to overturn convictions.* In the context of this case, the remark clearly had no effect whatsoever, since the evidence of guilt was, in fact, overwhelming. The evidence showed that Glover had exclusive access to her drawer; that she was accountable for \$1818 (Tr. 60-61); that she was short \$1007.55; that she gave numerous inconsistent exculpatory statements; and that she confessed to the crime and subsequently confirmed the truth of her confession. In view of this overwhelming evidence, the remarks she now attacks could not have affected the verdict.**

Finally, just prior to the summations, Judge Bonsal had instructed the jury that what the lawyers say is not evidence. (Tr. 246). He gave the same instruction after summation (Tr. 270) and in several instances during his charge instructed the jury in various ways that their verdict must be based on the evidence on the record and that finding the facts is their exclusive province. (Tr. 264-70, 273, 279, 281).

* For example, in *United States v. Splain*, 545 F.2d at 1134, the prosecutor stated:

We are trying to convict Bobby Splain because he committed a crime and we are convinced that or we wouldn't be trying him.

Similarly, in *United States v. Perez*, 493 F.2d at 1343 n.4 the prosecutor noted:

This is one of the most flagrant violations of federal law in drug trafficking that I have seen in this city in recent years.

For decisions in which this Court has affirmed convictions in cases involving statements considerably more pungent than that involved here, see *United States v. White*, *supra*, 486 F.2d at 207 and *United States v. Bivona*, 487 F.2d 443, 445-47 (2d Cir. 1973).

** Unlike the defendant in *Grunberger*, Glover does not attack the sufficiency of the evidence.

POINT II

Extrinsic Evidence Was Properly Admitted In Cross-Examination.

Glover complains that she was prejudiced by the admission on cross-examination of extrinsic evidence relating to her abortion story and to loans she obtained shortly before the audit revealed she was missing \$1007.55. Glover contends that both of these matters were collateral. In fact, both these matters were intimately related to the case in chief, were noncollateral, and, therefore, were properly the subject of extrinsic evidence on cross-examination.

The well-settled rule is that a witness may be impeached by extrinsic evidence as to noncollateral matters. *United States v. Blackwood*, 456 F.2d 526, 531 (2d Cir.), *cert. denied*, 409 U.S. 863 (1972); 3A Wigmore, *Evidence* § 1000 et seq. (Chadbourn rev. 1970) (hereinafter "Wigmore"). Non-collateral matters are matters which may be proven independently of the contradiction of the witness. *United States v. Blackwood*, *supra*; 3A Wigmore §§ 1003, 1021. "Non-collateral" encompasses matters impeaching some testimonial quality such as bias, corruption or skill, *United States v. Barash*, 365 F.2d 395 (2d Cir. 1966); 3A Wigmore, § 1005, as well as matters relating to the case in chief. In the last analysis, the limits of cross-examination lie within the discretion of the trial Court. *United States v. Blackwood*, *supra*, 456 F.2d at 529; *United States v. Lawinski*, 195 F.2d 1, 7 (7th Cir. 1952); 3A Wigmore § 1003; Fed. R. Evid. 611(b).

The questions of whether defendant had recently had an abortion and its cost to her were matters made non-collateral by her written confession asserting that she had taken the money to pay a "\$1750" abortion. These matters became particularly relevant because, as it de-

veloped at trial, the assertions in her statement tended to set up a defense in the nature of duress and were thus exculpatory.

Proof of the falsity of those statements was thus permissible on the Government's case in chief for a number of reasons. First, of course, exculpatory statements made by a defendant, when shown to be false, are circumstantial evidence of guilty consciousness. *United States v. Di-Stefano*, Dkt. No. 76-1581, slip op. 3539, 3556 (2d Cir. May 16, 1977); see also *United States v. Parness*, 503 F.2d 430, 438 (2d Cir. 1974), *cert. denied*, 419 U.S. 1005 (1975); *United States v. Lacey*, 459 F.2d 86 (2d Cir. 1972).

In addition, Glover's revision of her story on her direct testimony also contained statements concerning the abortion matter. These statements were designed to bolster her defense at trial that she had falsely admitted taking the money and concocted the abortion story because during the one hour interview she became tired of being asked questions and thought "it would be the best thing to say." (Tr. 209). Her assertion on direct examination that she knew the true cost of an abortion was only \$250 was an integral part of that defense, since it was an exaggeratedly low figure intended to bolster her defense at trial by making the abortion story in her written statement seem even more ridiculous * and thereby impeach her written admission that she had taken the money. The Government properly attacked this portion of Glover's direct testimony to demonstrate the effects upon her testimony of her deep personal bias. A witness's bias or motive to fabricate may, of course, be shown through extrinsic

* Defense counsel in his summation specifically noted that the written statement was ridiculous, and thus should not be credited. (Tr. 260).

evidence. *United States v. Harvey*, 547 F.2d 720, 722 (2d Cir. 1976); *United States v. Lawinski*, *supra*, 195 F.2d at 7; 3A Wigmore § 1005.*

Regarding Glover's Credit Union loans, she was asked on cross-examination whether she had a "family emergency" as she asserted on a loan application.** The Government also attempted to establish on cross-examination that after she received \$1000 from the Credit Union on July 26, 1976, she applied for another loan of \$1000 on August 6, 1976 which was declined. This line of questioning bore upon her need for money, and was designed to establish a motive for her embezzlement of approximately \$1000. As this Court has recently had occasion to reiterate, proof of motive is relevant, and its admission is consigned to the discretion of the trial judge. *United States v. King*, Dkt. No. 76-1435, slip op. 4877, 4896 (2d Cir., July 22, 1977). See also *Moore v. United States*, 150 U.S. 57, 61 (1893); *United States v. Fernandez*, 497 F.2d 730, 735-36 (9th Cir. 1974), *cert. denied*, 420 U.S. 990 (1975); *United States v. Cifarelli*, 401 F.2d 512 (2d Cir.), *cert. denied*, 393 U.S. 987 (1968); *United States*

* The cross-examiner's focus on the alleged cost of the abortion is clear on the record. (Tr. 217). He questioned her about the cost, asking her whether the \$250 had merely been the hospital fee. When a question by Judge Bonsal elicited that the \$250 figure was based on a 1972 abortion, the defendant was questioned about a 1976 abortion, which, one can reasonably assume, would have been at a higher cost. (Tr. 218). After Glover denied having an abortion in 1976, denied telling a co-worker that she had had an abortion in 1976, and denied making a hospital application for an "induced abortion", the hospital application was admitted in evidence. (Tr. 219; GX 14A). When Glover explained that the hospital application resulted from an incorrect diagnosis of pregnancy, Judge Bonsal terminated the line of questioning. The question of the cost of the 1976 abortion was not thereafter pursued.

** The loan request form signed by Glover stated as a reason for the loan "family emergency at home urgent." (GX 16).

v. *Rosenberg*, 195 F.2d 583, 595-96 (2d Cir. 1952), cert. denied, 344 U.S. 838 (1953).*

Accordingly, the extrinsic evidence complained of by Glover pertained to non-collateral matters or matters otherwise independently provable, see *People v. Schwartzman*, 24 N.Y. 2d 241 (1969), and the admission of that evidence is not barred by the principles cited by Glover.**

* Glover does not cite or rely upon the exclusion of extrinsic evidence in Fed. R. Evid. 608(b), apparently conceding its inapplicability to the facts of this case, as one court has recently noted in a similar situation. *United States v. Botts*, — F.2d —, 12 Crim. L. Rep. 2330 (9th Cir., June 3, 1977).

** In any event, the admission of the evidence could not have affected the verdict, which was overwhelmingly supported by the record. See Statement of Facts and discussion under Point One. Moreover, the foreclosure of the documents from the record could not have prevented questioning on these matters, which is limited only by the court's discretion, be they collateral or non-collateral, *United States v. Barash*, 365 F.2d 395, 401 (2d Cir. 1966); 3A Wigmore § 1023. The admission of the documents could have had at most only minor additional impact. Furthermore, the prosecutor did not comment upon the questioned extrinsic evidence in his summation, except to note Glover's admitted misrepresentation of a family emergency on a loan application, which she admitted prior to admission in evidence of the loan application. (Tr. 224). See *United States v. Williams*, 523 F.2d 407, 409-10 (2d Cir. 1975); *United States v. Duvall*, 537 F.2d 15, 25-26 (2d Cir. 1976).

CONCLUSION

The judgment of conviction should be affirmed.

Respectfully submitted,

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